

Davis-Bacon Compliance, Certified Payroll and contractor requirements

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“Strengthening & Expanding Your Business for Growth”

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OBJECTIVES

By the end of this course, participants will:

- Know the requirements of The Davis-Bacon Related Acts (DBRA)
- Understand the recordkeeping and reporting requirements
- Know when certified payrolls are required to be submitted to the contracting agency
- Know what information is required to be included on certified payrolls

The Davis-Bacon Act (DBA)

- The DBA applies to:

1. Laborers or Mechanics
2. working on contracts in excess of \$2,000 for the construction, alteration and/or repair of
3. public buildings or public works, including painting or decorating
4. where the U.S. government or District of Columbia is a direct party to the contract

Note: Construction includes activities performed only on the site of the work such as preparation for construction (demolition, equipment and material set up, etc.), installation of materials, and post-construction clean-up.



The DBA continued

- The DBA requires that each covered contractor pay the laborers/mechanics on a *weekly basis*, no less than the wages and benefits that are prevailing in the area, as determined by the Department of Labor.
- A prime contractor is responsible for applying the appropriate DBA standards and DBA wage determinations to all subcontracts for work performed by laborers or mechanics at the site of the work for the project.



The Related Acts

- The DBRA are Federal statutes which authorize Federal assistance in the form of contributions, grants, loans, insurance or guarantees for programs such as the construction of highways, hospitals, sewage treatment plants, housing complexes and airports.
- A DBRA will usually include language further that articulates the work that must be covered by the DBA prevailing wage requirements (as set by the Secretary of Labor)

Related acts (contd.)

- The American Recovery and Reinvestment Act is an example of a DBRA statute. The Recovery Act states that:

“Notwithstanding any other provision of law...all laborers and mechanics employed by contractors and subcontractors on funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor...

Related acts (contd.)

- In order to implement the Recovery Act requirement, the awarding federal agency or the agency providing funding assistance must first make the determination that DBA applies to the project, then must ensure that DBA clauses and wage determinations are made applicable to the performance of the work.

The Copeland “Anti-Kickback” Act

- The Copeland Act makes it illegal to induce any person working on a federal contract or on a federally financed or assisted construction project to “give up any part of the compensation to which he is entitled under his contract of employment”.
- Violation of this act is punishable by a fine or by imprisonment up to five years, or both.



The Contract Work Hours and Safety Standards Act (CWHSSA)

- The CWHSSA applies to:
 1. Certain federally funded or federally assisted contracts (contracts for services, construction or supply)
 2. that are in excess of \$100,000
 3. and may involve the employment of mechanics or laborers (including *watchmen and guards*) upon a public work

Note: The CWHSSA does not apply to contracts where the federal assistance is solely in the form of a loan guarantee or insurance

Requirements

- Contractors and subcontractors on prime contracts in excess of \$100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees **one and one-half times** their basic rates of pay for all hours over 40 worked on covered contract work in a workweek.

Recordkeeping & Reporting Requirements

- Covered contractors and subcontractors are required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.
- The prime contractor is responsible for the timely submission of certified payrolls for all subcontractors. They are also obligated to inform all subcontractors of the labor provisions of the contract.

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

OMB No.: 1235-0008
Expires: 01/31/2015

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS		OMB No.: 1235-0008 Expires: 01/31/2015	
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION	
				PROJECT OR CONTRACT NO.	

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHELD DEDUCTIONS	(3) WORK CLASSIFICATION	OT ORST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer

Date

I,

(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the _____

 _____; that during the payroll period commencing on the _____

 _____ (Building or Work) _____
 _____ day of _____, _____ and ending the _____ day of _____, _____

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full _____

 _____ (Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- ☐ — In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- ☐ — Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Recordkeeping & Reporting Requirements (contd.)

- **Records to be maintained include:**
 - Employees' name, address, and identification number
 - Each employee's work classification(s)
 - Daily and weekly numbers of hours worked

Recordkeeping & Reporting Requirements (contd.)

- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- Deductions made
- Actual wages paid

WAGE DETERMINATIONS

The screenshot shows the Wage Determinations OnLine.gov website. The browser window has a single tab titled "Wage Determination Online Homepage" and the address bar shows "www.wdol.gov". The website header features a blue and red banner with the text "Wage Determinations OnLine.gov" and a sub-header "Providing public access to federal wage determinations and related information." Below this, a paragraph states: "WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce." A navigation bar includes links for "HOME", "FAQs", "User Guide", and "Help". The main content area is divided into three columns: "Service Contract Act", "Davis-Bacon Act", and "Related Information". Each column contains a list of links. The "Service Contract Act" column includes "Selecting SCA WDs", "e98", "Archived WDs", "WDs due to be revised", and "PACT (Price Adjustment Calculation Tool) NEW!". The "Davis-Bacon Act" column includes "Selecting DBA WDs", "Archived WDs", "WDs due to be revised", and "Rollover Crosswalk NEW!". The "Related Information" column includes "Agency Labor Advisors", "Library", and "DOL Wage and Hour Website". Below the navigation bar, a section titled "Welcome to the Wage Determinations OnLine Program!" contains two paragraphs of text. To the right, a "News and Updates..." section contains a "NEW!" announcement about effective June 17, 2012, regarding new Health and Welfare Fringe Benefit Rates.

Firefox ▾ Wage Determination Online Homepage +

www.wdol.gov

Most Visited Getting Started Suggested Sites Web Slice Gallery

Bookmarks

Wage Determinations OnLine.gov
Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

HOME FAQs User Guide Help

Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none">Selecting SCA WDse98Archived WDsWDs due to be revisedPACT (Price Adjustment Calculation Tool) NEW!	<ul style="list-style-type: none">Selecting DBA WDsArchived WDsWDs due to be revisedRollover Crosswalk NEW!	<ul style="list-style-type: none">Agency Labor AdvisorsLibraryDOL Wage and Hour Website

Welcome to the Wage Determinations OnLine Program!

This website provides a single location for federal contracting officers to use in obtaining appropriate Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) for each official contract action. The website is available to the general public as well. Guidance in selecting WDs from this website is provided in the WDOL.gov User's Guide.

Alternatively, the WDOL.gov Program also provides contracting officers direct access to the Department of Labor's (DOL's) "e98" website to submit a request for SCA WDs for use on official contract actions. In some instances, the WDOL.gov Program will not contain the appropriate SCA WD, and contracting officers will be directed to use DOL's e98 website in order to obtain the required SCA WD. DOL will provide the contracting officer with an SCA WD through the e98 system.

News and Updates...

NEW! Effective June 17, 2012, the new Health and Welfare Fringe Benefit Rates will increase for all Service Contract Act wage determinations. See DOL All Agency Memorandum (AAM) 211. Revised WDs reflecting the new benefit rates will be available at the Wage Determination On-Line website (<http://www.wdol.gov>) on or about June 17, 2012. The Electronic SF-98 form will be temporarily unavailable because of the update from June 13 through June 17, 2012. No e98 requests will be processed at that time. The system will be back online once the update is

Recordkeeping & Reporting Requirements (contd.)

- If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
- If applicable, detailed information regarding approved apprenticeship or trainee programs

Payroll Requirements

- Each payroll submitted must be accompanied by a **“Statement of Compliance.”**
- Statements of Compliance are to be made on the form WH-347 "Payroll" (For Contractors Optional Use) <http://www.dol.gov/whd/forms/wh347instr.htm> or on any form with identical wording.

Payroll Requirements (contd.)

- Submission of “Statement of Compliance” **must** be completed **within seven days** after the regular pay date for the pay period.
- Each payroll report must be **numbered**, starting with “#1” as the first payroll submitted by the reporting contractor for the first week in which it employs covered workers on the site.

Payroll Requirements (contd.)

- The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages **must sign the weekly statement.**
- Under the DBRA, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter.

Additional Payroll Information...

- Contractors may also be asked to submit, via survey, wage data that may be used by the Wage and Hour Division to determine the locally prevailing wage rates that will apply to workers on Davis-Bacon and DBRA-covered projects. The submission of wage data is encouraged, but voluntary.
- [WD-10 Form, Report of Construction Contractor's Wage Rates](http://www.dol.gov/whd/programs/dbra/wd10/index.htm)
(<http://www.dol.gov/whd/programs/dbra/wd10/index.htm>)
can be used for wage data submission.

Additional Payroll Information

- Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be **fin**es of up to \$1000 and/or up to one year **imprisonment** for each false statement.

Things to Know...

- DBA requires a contractor to pay no less than the minimum wage and fringe benefit listed on the applicable wage determination for each covered hour worked, on a **weekly** basis.
- If a worker works at more than one classification in a single week, show each classification for the worker separately, along with hours worked and rate of pay (for each, respectively).

Things to Know... (contd.)

- Workers properly documented and employed as **apprentices** or **trainees** must:
- be reported as such with the classification in which they work.
- Provide supporting documentation proving workers enrollment in an approved program,
- *and* attach it to the first certified payroll, reporting their hours worked on the project.

Things to Know... (contd.)

- DBA has no overtime (OT) compensation requirements. ***However***, most contractors performing work on these projects are required by **FLSA and/or CWHSSA** to **pay OT** compensation at **time and one-half** the worker's "regular rate of pay" for the hours worked in excess of 40 each week.

Reporting Fringe Benefits

- on form WH-347:
 - Contractors are obligated to report payments made to comply with the DBA fringe benefit requirement and the manner in which these payments were made
 - Either cash paid in lieu of providing a fringe benefit plan and/or payments made to a plan that provides workers with benefits.

Reporting Fringe Benefits (contd.)

- **on form WH-347:**

- If contractor pays all workers the required DBA fringe benefits in cash, **in lieu of providing a benefit plan**, the contractor must report the payment on the 1st page of the WH-347, in Column (6) “Rate of Pay” and column (7) “Gross Amount Earned.”
- Contractor must also check **Box (4)(b)** on the second page of the form, indicating payment in cash in lieu of providing benefits.

Reporting Fringe Benefits (contd.)

- **on form WH-347**

- If contractor pays the required DBA fringe benefit rate into a bona fide fringe benefit plan for all workers, the contractor should mark Box (4)(a) on the second page of the form.
- It is not necessary to show the amount paid into these plans on the 1st page in column (6).

Reporting Fringe Benefits (contd.)

- **on WH-347 form:**

- It is of the utmost importance that the contractor clearly show the method used to comply with DBA.
- Information that is confusing, incomplete or inaccurate will lead to further inquiries during payroll review and may result in a full investigation to ensure contractor compliance.

RESTITUTION

- **Failure to pay** the appropriate DBA **wages and fringe benefits** will result in...
 - Contractor being **immediately** contacted and required to **pay full restitution** to the workers.
 - Typically allowed a 30 day window to make required payment(s)
 - Contractor will also be required to submit a **corrected payroll report** showing evidence of full payment of (back) wages

RESTITUTION

Contract #: DCKA-****-C-xxxx

Contract Name: *Insert name*

Contractor: *Insert name*

Prime __X__ or Subcontractor ____

Wage Determination Pay (calculation)

Employee: JOHN SMITH		Number							
Payroll Ending: 8/10/2012		xxx-xx-	1						
OT hours	Classification	Total Hours	Wage Rate	Wages Due	Fringe Rate	Fringe Due	OT Prem Rate	OT Due	WD TOTAL
		A	B	C= A*B	D	E= A*D	F= 8/2	G= OThours*F	
5	Cement Mason	25	27.15	678.75	6.47	161.75	13.575	67.875	
5	Truck Driver	25	17.5	437.5	2	50	8.75	43.75	
total		50		1116.25		211.75		111.625	\$ 1,439.63

WD PAY = \$ 1,439.63
 Reported on Certified Payroll = (1,250.00)
RESTITUTION DUE = \$ 189.63

Common Mistakes

- Incomplete or inadequate payroll information
 - If contractor does not use the WH-347 form, they must still provide all required information
- Missing addresses and identifying worker number
- Contractor **must** report an ID number for each worker
 - or last four digits of Social Security Number if no other identification system is in use

Common Mistakes (contd.)

- When contractor reports worker **classifications** that are **not listed** on the DBA wage determination....
 - The contractor will be asked to either reclassify the worker in compliance with the listed classifications
 - Or submit a copy of the SF-1444 “Request for Approval of Additional Classifications” to DOL along with the certified payroll report.

Failure to Comply

- If one fails to comply with the requirements stated above, they may be subject to one or more of the following consequences:
- Contract **termination** and **debarment** from future contracts for up to three years.
- Contract payments may be withheld to satisfy liabilities for unpaid wages and liquidated damages that result from Overtime violations of (CWHSSA) contract.



QUESTIONS ?



THANK YOU

MH MILES COMPANY, CPA PC